IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.552 of 2001

Mani .. Appellant/Complainant

vs.

A.Jaganathan .. Respondent/accused

Prayer: This Appeal has been preferred against the judgment dated 16.3.2001 made in C.C.No.72 of 2000 on the file of the Judicial Magistrate, Udhagamandalam.

For Appellant : Mr.A.M.Rahamath Ali
For Respondent : Mr.Lenin and Bhagya

JUDGMENT

The learned counsel for the appellant is present today and argued the appeal in the presence of the learned counsel for the respondent.

2.This appeal has been preferred against the judgment in C.C.No.72 of 2000 on the file of the Judicial Magistrate, Udhagamandalam. The complainant, who has lost his case before the trial Court, has preferred this appeal against the acquittal.

3.According to the complainant, who has preferred a complaint under Section 200 of Cr.P.C., for an offence under Section 138 of the Negotiable Instruments Act against the accused, is that on 11.2.2000 the accused had drawn a cheque for Rs.5,00,000/- in Andra Bank, Coimbatore Branch, which on presentation before the Indian Bank was returned with an endorsement that the drawer had no sufficient funds in his account to honour the cheque. After the return of the cheque, the complainant had issued a notice on 24.2.2000 to the accused informing him about the return of the cheque. Inspite of the receipt of the above said notice the accused had not chosen to send any reply nor repay the loan amount. Hence, the complaint.

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4.After taking cognizance of the complaint, the learned Judicial Magistrate issued summons to the accused and on his appearance copies under Section 207 of Cr.P.C., were furnished to the accused and when the offence was explained to the accused and questioned he pleaded not guilty. Before the trial Court P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.6 were marked.

5.P.W.1 is the complainant, who would depose what he had narrated in the complaint. He has identified Ex.P.1 as the impugned cheque drawn by the accused for Rs.5,00,000/- on 11.2.2000 in order to discharge the subsisting liability of hand loan borrowed on various dates from the complainant. Ex.P.2 is the memo dated 11.2.2000 sent along with Ex.P.1-cheque by Andra bank informing the complainant that the said cheque was returned, since the drawer has no sufficient funds in his account. Ex.P.3 is also another memo of intimation issued by the Indian Bank, wherein the drawer of the cheque (accused) is having his account. Under the original of Ex.P.4 the complainant had sent a notice to the accused informing about the impugned cheque-Ex.P.1 which on presentation was returned by the Bank for the reason "funds insufficient". The said notice was received by the accused on 28.2.2000 under Ex.P.5-acknowledgment.

6.P.W.2 is the Assistant Manager of Indian Bank, Udhagamandalam Branch. According to him, the complainant is an account holder under account No.5239. He would admit that the impugned cheque was presented in the bank for realization and the same was forwarded to Andra Bank, Coimbatore Branch, wherein the accused was having his account, but the same was returned with an endorsement that there is no sufficient funds in the account of the accused. Ex.P.2 is the memo sent by Andhra Bank, Coimbatore Branch. Ex.P.3 is the notice given by Indian Bank informing about the dishonour of the cheque for want of sufficient funds in the accounts of the accused.

7.P.W.3 is an officer in the Andhra Bank, Coimbatore Branch. He would admit that the accused is a customer of their bank and his account number is No.2309. He would admit that Ex.P.1-cheque belongs to Andhra Bank, Coimbatore Branch and that the same was forwarded to their bank for collection on 11.2.2000, but on the date of presentation of the cheque there was only Rs.2,243/- remains as the balance of credit in the account of the accused. Ex.P.6 is the statement of accounts for the accused's account.

8.When incriminating circumstances were put to the accused, he would deny his complicity with the crime. He has examined D.W.1 to D.W.4 and also marked Ex.D.1 & Ex.D.2 on his side.

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9.After going through the evidence both oral and documentary, the learned trial Judge carried away by the defence taken by the accused that the complainant has failed to prove his affluent status to lend Rs.5,00,000/- towards loan to the accused forgetting the fact whether the complainant has proved the guilt of the accused as contemplated under Section 138 & 139 of the Negotiable Instruments Act, has acquitted the accused from the charge under Section 138 of the Negotiable Instruments Act levelled against him, which necessitated the complainant to come before this Court with this appeal.

10.Now the point for determination in this appeal is whether the findings of the learned trial judge is perverse in nature to warrant interference from this Court?

11.The Point:- Relying on the ratio in 1998 Crl.L.J. 906 (A.Bhoosanrao Vs. Prushothamdas Pantani and another), the learned trial judge has held that when the complainant says that he had lent huge amount by way of cheque, which was denied by the accused, the burden is on the complainant to prove that he had sufficient capacity to lend the said amount that too by cheque. The facts of the above said case is as follows:-

> "The complainant in that case has preferred a complaint under Section 200 of Cr.P.C., for an offence under Section 138 of the Negotiable Instruments Act alleging that the cheque amount was paid by the complainant to the accused from out of his salary and that there was no account maintained by him and he is not an income-tax assessee. To show that he had sufficient capacity to lend the said amount, the complainant in the witness box would say that he had earned lakhs of rupees through real estate business every year. But he has not filed any income-tax return to substantiate this claim. Only under such circumstance, the Court held that the complainant had failed to prove satisfactorily that he has sufficient capacity to lend the amount of Rs.1,25,000/-. Apart from this ground, the Court had dismissed the complaint on the other ground that in the cheque-Ex.P.2 the entire body of the letter was typed but the sum of Rs.1,25,000/- was written both in figures and words in ink, which was also not properly explained by the complainant under what circumstance Ex.P.2-impugned cheque was partially typed and the amount only written in hand writing with ink."

But that is not the case herein. P.W.1 in his evidence would depose that the accused had borrowed money from him on several occasions and only to discharge the liability of Rs.5,00,000/- which was the amount due to him

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on the date of drawal of the impugned cheque i.e., on 11.2.2000, the accused had drawn Ex.P.1-cheque in favour of him. He would admit in the chief-examination itself that the accused is the owner of Murugan Lodge at Udhagamandalam and that he is indulged in cine field and to meet cinema shooting expenses the accused used to borrow money from him on several occasions. According to him, about 20 persons were employed under him in his land and doing agriculture and that the accused came to his house on 11.2.2000 and after receiving the loan amount, had drawn Ex.P.1-cheque in favour of him.

11(a) The defence taken by the accused in this case is that the impugned cheque-Ex.P.1 belongs to his brother D.W.4 and the same was stolen away from him and that with the stolen cheque the accused has forged the same and filed this complaint. D.W.4, the brother of the accused, would depose that the complainant had worked under him for nearly 3 years and during that period he had lost one cheque leaf. But in the cross-examination he would admit that he has not preferred any complaint with the police regarding the loss of the cheque and he has further admitted that he has also not informed about the loss of the cheque leaf to the Bank concerned. Further he has also not produced any documentary evidence to show that the complainant had worked under him for nearly three years. It is not the case of the accused in defence that his signature has been forged in Ex.P.1-cheque. On the other hand even after the receipt of the original of Ex.P.4-notice under Ex.P.5-acknowledgment, the accused has not chosen to send any reply denying the averments contained in the original of Ex.P.4-notice. Under such circumstances, it is to be presumed that the fact that Ex.P.1-impugned cheque for Rs.5,00,000/- was drawn by the accused in favour of the complaint has been proved and from the evidence of P.W.2 & P.W.3 it has been proved that on presentation of the said cheque with the bank the same was returned or dishonoured with an endorsement that there is no sufficient funds in the account of the accused. The presumption under Section 118 and 139 of the Negotiable Instruments Act is that only for a valuable consideration the impugned cheque Ex.P.1 was drawn by the accused in favour of the complainant. Hence, I am of the view that the findings of the learned trial Judge that the complainant has failed to prove that he had sufficient funds to lend loan amount to the accused and that the offence under Section 138 of the Negotiable Instruments Act was not attracted against the accused cannot be sustainable.

12.Now coming to the point of sentence the ratio laid down in 2004 (2) SCC 235 (Goa Plast (P) Ltd. Vs. Chico Ursula D'Souza), by the

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Honourable Apex Court is to be followed in this case also. The relevant observation of the Honourable Apex Court in the said ratio is extracted below for the purpose of deciding this appeal:-

> "We have no doubt that the respondent has committed an offence punishable under the provisions of Section 138 of the NI Act and is liable to be punished. The transaction in question took place between the parties in the year 1993, therefore, Section 138, as it stood at the relevant time, would be applicable to the present case. Section 138 provides imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both. Section 138 has now been amended and the penalty of imprisonment for a term which may extend to one year has been substituted by two years as provided by the amending Act of 2002 and the fine which may extend to twice the amount of the cheque. This has been prescribed as the punishment for the offence under Section 138 of the Act.
>
> The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil Court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.

With the above observation the Honourable Apex Court has disposed of the above appeal as follows:-

> "We, therefore, grant one month's time from this date to the respondent herein to pay a sum of Rs.80,000/- (twice the amount of the cheque) by way of demand draft drawn in favour of the appellant and payable at Goa (on the address given in the

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paper-book). In default thereof, the respondent shall suffer simple imprisonment for six months.""

I am of the opinion that the same yardstick can be followed for this appeal also. Point is answered accordingly.

12. In fine, the appeal is allowed and the judgment in C.C.No.72 of 2000 on the file of the Judicial Magistrate, Udhagamandalam, is set aside and the accused/respondent herein is convicted under Section 138 of the Negotiable Instruments Act and a month's time is granted from this date to the accused/respondent herein to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs) only (twice the cheque amount) to the complainant/appellant herein, in default thereof, the respondent herein shall suffer Simple Imprisonment for one year. The appeal is disposed of with the above observation.

ssv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Judicial Magistrate,
Udhagamandalam.

2.-do- Thro The Chief Judicial Magistrate,
Nilgiris.

+ One cc to Mr. A.M. Ramath Ali, Advocate sR 37733

PV (co)

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